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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/322,283	05/28/1999	DAVID L. ROLLINS	12-0895	7766

7590 02/07/2003

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EXAMINER
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SEDIGHIAN, REZA

ART UNIT	PAPER NUMBER
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2633

DATE MAILED: 02/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/322,283

Applicant(s)

ROLLINS, DAVID L.

Examiner

M. R. Sedighian

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See the continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-5, 7 and 12-24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

The final rejection of 11/1/02 still stands because the affidavit or declaration filed on January 6, 2003 under 37 CFR 1.131 has been considered but is ineffective to overcome the Burns reference (U.S. Patent No. 5,917,970), the Dishman et al reference (U.S. Patent No. 6,271,953), the Franck et al reference (U.S. Patent No. 6,188,497), and the article entitled, "linearization of Broadband Analog Optical Link Using Multiple Wavelengths" by Edward Acherman, Technical Digest International Topical Meetings on Microwave Photonics October 12-14 1998, Sarnoff Corporation, Princeton, New Jersey, pages 45-47. The evidence submitted is insufficient to establish a reduction to practice of the invention, a conception of the invention, and to establish diligence of the invention prior to the effective date of the Burns reference (U.S. Patent No. 5,917,970), the Dishman et al reference (U.S. Patent No. 6,271,953), the Franck et al reference (U.S. Patent No. 6,188,497), and the article entitled, "linearization of Broadband Analog Optical Link Using Multiple Wavelengths" by Edward Acherman, Technical Digest International Topical Meetings on Microwave Photonics October 12-14, 1998, Sarnoff Corporation, Princeton, New Jersey, pages 45-47. The affidavit or declaration filed by applicant merely contains conclusion statement or allegation without support of any evidence or fact. Allegation or conclusions of applicant can not take the place of evidence. A declaration by the invention to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131. 37CFR 1.131 (b) requires that original exhibits of drawings or records, or photocopies thereof, accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

  
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